



ALFRED POLIZZOTTO III\*

EMILIO RODRIGUEZ, JR.

\*(ADMITTED NEW YORK, NEW JERSEY)

LONG ISLAND OFFICE  
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November 17, 2021

MEMORANDUM ENDORSED

**VIA ELECTRONIC FILING**

The Honorable Gabriel W. Gorenstein  
Daniel Patrick Moynihan United States Courthouse  
Courtroom 6B  
500 Pearl Street  
New York, NY 10007

**Re: *Erdman v. Victor*, 20-CV-04162-LGS-GWG**

Dear Judge Gorenstein:

We are in receipt of the order issued today as Docket No. 108.

Plaintiff and I conducted a phone conference today at approximately 2:40 for 28 minutes. I reminded the Plaintiff that the reason we had opposed the noticed deposition date of the Defendant was because neither he nor I were available that day. During an email exchange between the parties on November 2, 2021, we provided an alternate date of December 6, 2021, the last day of depositions between the parties according to the Case Management Plan.

In terms of Plaintiff's opposition, he expressed during today's call a reluctance to agree on a new date due to the fact he felt I finally gave him a new date on November 2, 2021 because I was forced as a result of the submission of the joint status report to Judge Schofield as required by the Case Management Plan on November 1, 2021. A copy of this report has been attached. The report indicates the deposition of the Defendant was scheduled for November 17, 2021 and that the parties were in discussion to set a new date. The Notice of Deposition served by the Plaintiff on October 18, 2021 has been attached as well, indicating original date of November 17, 2021.

PLEASE RESPOND TO BROOKLYN OFFICE

That date was today. There was never any date of November 19, 2021 scheduled and the parties were always conferring on a new date.

Reference is made in the court's order issued today to the fact Defendant did not mention any opposition to the date noticed for the deposition of the Defendant, namely November 17, 2021, not the date incorrectly indicated in today's court order. The reason no opposition was included was because this opposition had already been expressed to the Plaintiff on November 2, 2021. After an exchange of possible days, I indicated the only day we were both available was December 6, 2021, the last day indicated in the Case Management Plan. The reason days such as December 2, 4 and 5 are unavailable is that December 2 has to be left open for certain parties' availability whose difficulty when it comes to scheduling is well known to Plaintiff and Defendant. The 4<sup>th</sup> and the 5<sup>th</sup> are weekend days. During our conversation today, Plaintiff initially showed a willingness to schedule another day, but upon reflection decided to not consent, and requested we make this application to the court to allow the parties to schedule dates more in conformity with the deadline of December 22, 2021 expressed in today's order. Plaintiff had indicated to me in the exchange on November 2, 2021 that he would not be available on December 6, 2021, a fact I had forgotten during our phone call today.

Therefore, we ask the Court allow the parties to reschedule our depositions in accordance with the December 22, 2021 date expressed in the court's order dated November 17, 2021.

Yours faithfully  
**Polizzotto & Polizzotto, LLC**

/s/ Emilio Rodriguez  
Emilio Rodriguez (ER2526)

The defendant's response to plaintiff's letter referencing the November 19 date failed to make any correction. Yet the defendant accuses the Court of setting an "incorrect" deposition date without acknowledging that he bears any responsibility for this occurrence. That being said, the parties should arrange for the deposition to occur on the first date that is mutually convenient to both sides. If the parties cannot agree on a date, they shall file a joint letter by November 22, 2021, that lists all succeeding business days (through December 10, 2021, unless the parties agree otherwise) and the reasons each side gives for unavailability on each date. The Court will then choose a date.

So Ordered.

  
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GABRIEL W. KORENSTEIN  
United States Magistrate Judge

November 18, 2021